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(Peña, Naishtat)

S.B. No. 1881

A BILL TO BE ENTITLED

AN ACT

relating to authorizing supported decision-making agreements for certain adults with disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle I, Title 3, Estates Code, is amended by adding Chapter 1357 to read as follows:

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. This chapter may be cited as the Supported Decision-Making Agreement Act.

Sec. 1357.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

1 (4) "Supported decision-making agreement" is an
2 agreement between an adult with a disability and a supporter
3 entered into under this chapter.

4 (5) "Supporter" means an adult who has entered into a
5 supported decision-making agreement with an adult with a
6 disability.

7 Sec. 1357.003. PURPOSE. The purpose of this chapter is to
8 recognize a less restrictive alternative to guardianship for adults
9 with disabilities who need assistance with decisions regarding
10 daily living but who are not considered incapacitated persons for
11 purposes of establishing a guardianship under this title.

12 SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

13 Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING
14 AGREEMENT. An adult with a disability may voluntarily, without
15 undue influence or coercion, enter into a supported decision-making
16 agreement with a supporter under which the adult with a disability
17 authorizes the supporter to do any or all of the following:

18 (1) provide supported decision-making, including
19 assistance in understanding the options, responsibilities, and
20 consequences of the adult's life decisions, without making those
21 decisions on behalf of the adult with a disability;

22 (2) subject to Section 1357.054, assist the adult in
23 accessing, collecting, and obtaining information that is relevant
24 to a given life decision, including medical, psychological,
25 financial, educational, or treatment records, from any person;

26 (3) assist the adult with a disability in
27 understanding the information described by Subdivision (2); and

1 (4) assist the adult in communicating the adult's
2 decisions to appropriate persons.

3 Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may
4 exercise the authority granted to the supporter in the supported
5 decision-making agreement.

6 Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided
7 by Subsection (b), the supported decision-making agreement extends
8 until terminated by either party or by the terms of the agreement.

9 (b) The supported decision-making agreement is terminated
10 if:

11 (1) the Department of Family and Protective Services
12 finds that the adult with a disability has been abused, neglected,
13 or exploited by the supporter; or

14 (2) the supporter is found criminally liable for
15 conduct described by Subdivision (1).

16 Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A
17 supporter is only authorized to assist the adult with a disability
18 in accessing, collecting, or obtaining information that is relevant
19 to a decision authorized under the supported decision-making
20 agreement.

21 (b) If a supporter assists an adult with a disability in
22 accessing, collecting, or obtaining personal information,
23 including protected health information under the Health Insurance
24 Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or
25 educational records under the Family Educational Rights and Privacy
26 Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure
27 the information is kept privileged and confidential, as applicable,

1 and is not subject to unauthorized access, use, or disclosure.

2 (c) The existence of a supported decision-making agreement
3 does not preclude an adult with a disability from seeking personal
4 information without the assistance of a supporter.

5 Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED
6 DECISION-MAKING AGREEMENT. (a) A supported decision-making
7 agreement must be signed voluntarily, without coercion or undue
8 influence, by the adult with a disability and the supporter in the
9 presence of two or more subscribing witnesses or a notary public.

10 (b) If signed before two witnesses, the attesting witnesses
11 must be at least 14 years of age.

12 Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING
13 AGREEMENT. (a) Subject to Subsection (b), a supported
14 decision-making agreement is valid only if it is in substantially
15 the following form:

16 SUPPORTED DECISION-MAKING AGREEMENT

17 Appointment of Supporter

18 I, (insert your name), make this agreement of my own free
19 will.

20 I agree and designate that: _____

21 Name: _____

22 Address: _____

23 Phone Number: _____

24 E-mail Address: _____

25 is my supporter. My supporter may help me with making everyday life
26 decisions relating to the following:

27 Y/N obtaining food, clothing, and shelter

1 Y/N taking care of my physical health

2 Y/N managing my financial affairs.

3 My supporter is not allowed to make decisions for me. To help
4 me with my decisions, my supporter may:

5 1. Help me access, collect, or obtain information that is
6 relevant to a decision, including medical, psychological,
7 financial, educational, or treatment records;

8 2. Help me understand my options so I can make an informed
9 decision; or

10 3. Help me communicate my decision to appropriate persons.

11 Y/N A release allowing my supporter to see protected
12 health information under the Health Insurance Portability and
13 Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

14 Y/N A release allowing my supporter to see educational
15 records under the Family Educational Rights and Privacy Act of 1974
16 (20 U.S.C. Section 1232g) is attached.

17 Effective Date of Supported Decision-Making Agreement

18 This supported decision-making agreement is effective
19 immediately and will continue until (insert date) or until the
20 agreement is terminated by my supporter or me or by operation of
21 law.

22 Signed this _____ day of _____, 20____

23 Consent of Supporter

24 I, (name of supporter), consent to act as a supporter under
25 this agreement.

26 _____
27 (signature of supporter) (printed name of supporter)

Signature

(my signature) (my printed name)

(witness 1 signature) (printed name of witness 1)

(witness 2 signature) (printed name of witness 2)

State of _____

County of _____

This document was acknowledged before me

on _____ (date)

by _____ and _____

(name of adult with a disability) (name of supporter)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form

1 not inconsistent with Subsection (a) and the other requirements of
2 this chapter.

3 SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

4 Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF
5 LIABILITY. (a) A person who receives the original or a copy of a
6 supported decision-making agreement shall rely on the agreement.

7 (b) A person is not subject to criminal or civil liability
8 and has not engaged in professional misconduct for an act or
9 omission if the act or omission is done in good faith and in
10 reliance on a supported decision-making agreement.

11 Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR
12 EXPLOITATION. If a person who receives a copy of a supported
13 decision-making agreement or is aware of the existence of a
14 supported decision-making agreement has cause to believe that the
15 adult with a disability is being abused, neglected, or exploited by
16 the supporter, the person shall report the alleged abuse, neglect,
17 or exploitation to the Department of Family and Protective Services
18 in accordance with Section [48.051](#), Human Resources Code.

19 SECTION 2. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section [39](#), Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2015.